Chin Hon Loi & Anor v Asia Insurance (M) Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO S-04–313 OF 2009
JAMES FOONG FCJ, ZAINUN ALI JCA AND DAVID WONG J
2 DECEMBER 2011

Insurance — Fire insurance — Claim on policy — Policy contained temporary storage clause (Policy A) that covered loss of appellant's property stored temporarily anywhere in Malaysia — Policy A also contained clause that policy did not apply to 'property insofar as it was otherwise insured' — Construction of clause — Whether clause was ambiguous — Whether appellant's property stored in other business premises were covered by the temporary storage clause in Policy A

Elektrik Chung Hwa ('the appellant'), had taken out two separate fire insurance policies in respect of its two business premises situated in Bandar Indah ('premises A') and Bandar Leila ('premises B') in Sandakan. Both fire insurance policies were issued by the defendant insurance company. The policy in respect of premises A ('Policy A') contained a temporary storage clause, which covered the appellant's property that was stored not only in premises A, but also temporarily stored anywhere in Malaysia. The second policy in respect of premises B ('Policy B') did not include such a clause. Subsequently a fire broke out in premises B and destroyed all the appellant's goods therein. Although the goods damages were valued at RM608,804.44, Policy B had a maximum cover of RM200,000. The appellant's claim was settled at RM197,759. However, the appellant also made a claim of RM90,000 on Policy A on the grounds that goods from premises A were temporarily stored in premises B. The respondent repudiated liability for this claim by relying on a clause in the Policy A which provided that this policy did not apply to 'property insofar as it was otherwise insured' (the clause). The appellant filed a claim in the sessions court for the value of the goods from premises A, which were temporarily stored in premise B and destroyed by the fire. The sessions court held that the clause was ambiguous and invoked the contra preferentum rule of interpretation against the respondent. However, on appeal to the High Court the sessions court's decision was overturned. This was the appellant's appeal against the decision of the High Court. The crux of the appellant's contention was that goods from premises A, which were temporarily stored at premises B when the fire broke out, were covered by the temporary storage clause in Policy A.

Held, dismissing the appeal with costs of RM5,000:

(1) The court found the words employed in Policy A to be clear and

unambiguous. As such, when these words were given their plain English meaning, it was found that Policy A did not cover goods that were stored in premises B, which were already covered by Policy B. Hence, it was the view of this court that there was no ambiguity in the clause and accordingly the contra preferentum rule had no application in this case (see paras 9–10).

(2) As for the argument of paying extra premium for the extra coverage, this court was of the view that the extra coverage concerned goods temporarily stored in premises where there was no insurance coverage (see para 11).

[Bahasa Malaysia summary

Elektrik Chung Hwa ('perayu'), telah mengambil dua polisi insurans kebakaran yang berasingan berkenaan dua premis perniagaannya yang terletak di Bandar Indah ('premis A') dan Bandar Leila ('premis B') di Sandakan. Kedua-dua polisi insurans ('polisi') dikeluarkan oleh syarikat insurans defendan. Polisi berkenaan premis A ('Polisi A') mengandungi klausa penyimpanan sementara yang melindungi hartanah perayu bukan sahaja yang disimpan di premis A, tetapi juga yang disimpan secara sementara di mana-mana pun di Malaysia. Polisi kedua berkenaan premise B ('Polisi B') tidak memasukkan klausa sedemikian. Kemudiannya kebakaran terjadi di premis B dan memunaskan kesemua barangan perayu di dalamnya. Walaupun kerugian barangan dinilaikan pada jumlah RM608,804.44, Polisi B mempunyai perlindungan maksimum sebanyak RM200,000. Tuntutan perayu diselesaikan pada RM197,759. Walau bagaimanapun, perayu juga membuat tuntutan sebanyak RM90,000 atas Polisi A atas alasan bahawa barangan adalah daripada premis A disimpan secara sementara di premis B. Responden menolak liabiliti untuk tuntutan ini dengan bergantung kepada klausa di dalam Polisi A yang memperuntukan bahawa polisi ini tidak beraplikasi kepada 'property insofar as it was otherwise insured' ('klausa tersebut'). Perayu memfailkan tuntutan di mahkamah sesyen untuk nilai barangan daripada premis A, yang mana disimpan secara sementara di premis B dan dimusnahkan oleh kebakaran tersebut. Mahkamah sesyen memutuskan bahawa klausa tersebut adalah tidak jelas dan membangkitkan kaedah tafsiran contra preferentum terhadap responden. Walau bagaimanapun, atas rayuan ke Mahkamah Tinggi keputusan mahkamah sesyen ditolak. Ini adalah rayuan perayu terhadap keputusan Mahkamah Tinggi. Teras hujahan perayu adalah bahawa barangan daripada premis A, yang disimpan secara sementara di premis B apabila kebakaran terjadi, dilindungi oleh klausa penyimpanan sementara di dalam Polisi A.

Diputuskan, menolak rayuan dengan kos RM5,000:

(1) Mahkamah mendapati bahwa perkataan-perkataan yang digunakan di dalam Polisi A adalah jelas. Oleh itu, apabila perkataan-perkataan ini

ditafsirkan dalam bahasa Inggeris yang biasa, ia didapati bahawa Polisi A tidak melindungi barangan yang disimpan di premis B, yang mana telah dilindungi oleh Polisi B. Maka, adalah pendapat mahkamah ini bahawa tidak terdapat kesamaran di dalam klausa dan oleh itu kaedah contra preferentum tidak beraplikasi di dalam kes ini (lihat perenggan 9–10).

(2) Berkaitan hujahan membayar premium tambahan untuk perlindungan tambahan, mahkamah ini berpendapat bahawa perlindungan tambahan adalah berkenaan barangan yang disimpan secara sementara di premis-premis di mana tidak terdapat perlindungan insurans (lihat perenggan 11).]

Notes

For cases on claim on policy, see 8(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 114–119.

Appeal from: Civil Appeal No 12–15 of 2008 (High Court, Sandakan)

Francis Wong (William Liaw Chan & Co) for the appellant.
Tsang Hieng Yee (VK Liew & Partners) for the respondent.

David Wong J:

INTRODUCTION

[1] This appeal concerns only on an interpretation of a provision of one of two insurance policies taken out by the appellant (who is the plaintiff in the first instant). That provision is cl FC20(d) ('the clause') which states as follows:

> The property (excluding buildings) insured under this policy is covered whilst, temporarily stored anywhere in Malaysia … Provided that:
>
> (a) The period of temporary storage shall not exceed sixty (60) days,
>
> (b) The liability of the company is limited to 10% of the total sum insured of RM500,000.00 whichever is the lower for the property covered under thus clause,
>
> (c) The company shall not be liable for any loss or damage whilst in transit (including the processes of loading and unloading incidental to such transit),
>
> (d) This insurance does not apply *to property insofar as it is otherwise insured* nor does it apply to motor vehicles and motor chassis licensed for road use or being used on a road as defined in the Road Transport Act 1987 (including accessories thereon). (Emphasis added.)

BACKGROUND FACTS

[2] The appellant took out two fire insurance policies on two premises which are owned and used by the appellant for purpose of business. One premise, situated at Bandar Indah, Mile 4, North Road Sandakan ('premise A'), was used as a show room and this was covered by Policy No 91DFF000290501 ('Policy A') with a 'temporary storage clause' extension. The other premise, situated at Bandar Leila, Sandakan ('premise B') was covered under Policy No 91DFF0006860502 ('Policy B').

[3] On 21 September 2006, a fire broke out at premise B and destroyed all the goods contained therein. This resulted in a claim on Policy B by the appellant for the loss of these goods. These goods damaged were valued at RM608,804.44 but because Policy B has a maximum cover of RM200,000, the claim was settled at RM197,759. However the appellant also made a claim of RM90,000 on Policy A for goods from premise A which were temporarily stored in premise B. This claim was based on the 'temporary storage clause' extension in Policy A. This claim was rejected by the respondent which resulted in a claim filed in the Sessions Court, Sandakan by the appellant.

[4] The sessions court by virtue of an application by the appellant decided that the case could be disposed of by dealing with the following preliminary issue:

> Whether the defendant (respondent in this appeal) can rely on cl FC20(d) of Policy No 91DFF0000290501 which, inter alia, provides that 'this insurance does not apply to property insofar as it is otherwise insured …' to repudiate liability to pay the plaintiffs for the damages caused by the fire?.

[5] On 17 November 2008, after hearing submissions from counsel the sessions court judge held that cl FC20(d) is ambiguous and invoked the contra preferentem rule of interpretation against the respondent. However on appeal to the High Court, Sandakan, the sessions court's decision was overturned. The appellant then appeal to the Court of Appeal and it is this appeal which is now before us.

ISSUE

[6] There is little doubt that after hearing counsel the only issue before us is the same as that before the sessions court judge at the first instant and as set out by us earlier.

[7] The crux of the appellant's contention is that goods from premise A which were temporarily stored at premises B when the fire broke out are

covered by cl FC20(d) temporary clause in Policy A. It is also the appellant's contention that there is ambiguity or doubt as to the meaning of cl FC20(d) and hence the contra properentem rule of interpretation should be applied in favour of the appellant who is the insured.

[8] Before we deliberate on the issue, it should be pointed out that there is no dispute by either party that the some goods destroyed in premise B were from premise A. They were stored there temporarily. It is also not disputed that Policy B covers all goods stored in that premise irrespective of where they are from and whether they are stored there permanently or otherwise.

[9] In construing any document, the court must do so within its four corners and where the words employed are clear and unambiguous, they must be given their plain English meaning. The operative phrase here is this:

> … this insurance (Policy A) does not apply to property insofar as it is otherwise insured …

[10] In plain English these words in our view simply mean this: Policy A's does not cover goods which are stored in a premise which has insurance coverage for fire for the same goods. In this case, goods from premise A were stored in premise B and by virtue of Policy B's these goods were covered for loss by fire. In other words, the appellant was entitled to claim its loss for goods in premise A goods under Policy B. And by virtue of Policy B, Policy A cannot be utilised by the appellant to claim for loss of those goods lost in premise B as it does not cover goods which are otherwise insured. Hence it is our view that there is no ambiguity in the cl FC20(d) and accordingly the contra properentem rule has no application here.

[11] In respect of the appellants' contention that such interpretation may run contrary to the objective of paying extra premium for the extra coverage, we are of the view that the extra coverage concerns goods temporarily stored in a premise where there is no insurance coverage. As for the meaning of the word 'property', one must refer to the two policies which clearly relates to the premises itself and goods contained therein.

[12] Accordingly we agree with the finding of the learned judicial commissioner and dismiss this appeal with costs in the sum of RM5000 to the respondent. We also order the deposit be refunded to the appellant.

Appeal dismissed with costs of RM5,000.

Reported by Kohila Nesan